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JURISDICTION OF INDIAN COURTS.

The following opinion of the learned Attorney-General of the United States relates to a question of more importance in other sections of the Union than in this, but it involves an able discussion of greater interest than the question which has occasioned it.

Attorney-General's Office,
23d May, 1855.

To the Hon. Robert McClelland, Secretary of the Interior.

Sir: — I have duly considered your communication of the 7th ult., and the papers it encloses, from the Commissioner of Indian Affairs, presenting a question of the nature and extent of the jurisdiction of the courts of the Choctaw nation.

The facts, on which the question arises, are few and simple, as follows:

Thomas F. Cheadle, represented to be a "white man," — which, if it have any pertinent meaning in the case, must mean that he is a man of European race, and a *possible* citizen of the United States, by right of birth, or naturalization according to law, — married a Chickasaw woman, by whom he had children, previous to the emigration of the Chickasaws from the state of Mississippi, — became entitled to a Chickasaw head-right of three sections of lan

under the treaty between the United States and the Chickasaws, of July 1, 1834, — emigrated with the Chickasaws to their present residence in the country of the Choctaws, — draws annuity as a Chickasaw, — has sued, as plaintiff, in the Choctaw courts, — votes for officers to the general council, — and exercises all the other rights of a Chickasaw member of the Choctaw and Chickasaw Union.

According to the terms of the treaty, there was a grant in fee — "To heads of families, being Indians, or having Indian families, consisting of five and less than ten persons, three sections," (art. 5.) These rights of reservation, and the general rights of the treaty, were assured to all such as "have heretofore intermarried with the Chickasaws and are residents of the nation." (art. 7.) It was further stipulated that where any "white man" had married an Indian woman, the reservation he might thus become entitled to, she being alive, should be in her name, with no right of alienation in him, except in the ordinary legal forms of conveyance, by which the estate of a *feme covert* passes, such conveyance to be acknowledged before the agent, (art. 7,) who must in such case certify that the head of the family is prudent and competent to manage his affairs, without which (art. 4) the proceeds of sales would go into the general Chickasaw fund, there to remain subject to the direction of the chiefs in council. (7 Stat. at Large, p. 450.)

The reservations in fee, thus obtained by Cheadle and wife, they sold; and controversy as to a portion of the proceeds has now arisen between him and his surviving children, who also reside as Chickasaws in the Choctaw nation.

Upon these facts, the question of law presented is, — What forum has jurisdiction of this litigation of property? The Choctaw nation think it belongs to their courts: the United States' Agent residing with the Choctaws (Mr. Cooper), thinks there is no court which has jurisdiction of the matter, and that the determination of it belongs, in the first instance, to him, subject, of course, to the authority of his executive chiefs, the Commissioner of Indian Affairs, the Secretary of the Interior, and the President.

The solution of this new question must, of course, be evolved from the constitution, from treaties under it, from acts of Congress, and the general principles of law, as affording a key to the construction of the statutes and treaties, and the constitution.

On the one hand, the Choctaws allege the following provisions of the treaty of Dancing Rabbit Creek:

"The government and people of the United States are hereby obliged to secure to the said Choctaw nation of red people, the jurisdiction and government of all the persons and property that may be within their limits west, so that no territory or state shall ever have a right to pass laws for the government of the Choctaw nation of red people, and their descendants; and that no part of the land granted them shall ever be embraced in any territory or state; but the United States shall forever secure said Choctaw nation from and against all laws, except such as from time to time may be enacted, in their own national councils, not inconsistent with the constitution, treaties and laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress, under the constitution, are required to exercise a legislation over Indian affairs." (7 Stat. at Large, p. 333.)

And the Choctaws, in addition, show that they are in the actual possession and full exercise of local government and laws of their own, amply sufficient for the determination of all questions of mere private right arising within the territory of the nation.

On the other hand, it is argued by the United States' Agent, that the courts of the Choctaws can have no jurisdiction of any case in which a citizen of the United States is a party; that no white man, a citizen of the United States, can, by adoption, marriage, or otherwise, be incorporated with any Indian nation so as to be divested of his allegiance and obligations to the government and laws of the United States; and that these doctrines, as applicable to the present question, have been settled by the official opinions of successive attorneys-general of the United States.

As to the latter argument, the assumed opinions of attorneys-general, I observe only, at present, that the precise question has never been considered, and therefore has not been determined, by any of my predecessors, either as the point of decision, or even by way of argument; and I shall consider in the sequel the particular opinions relied on by the Agent.

I begin with discussion of the merits and reason of the question as presented by the Agent.

In the first place, it is certain that the Agent errs in assuming the legal impossibility of a citizen of the United

States becoming subject, in civil matters, or criminal either, to the jurisdiction of the Choctaws. It is true that no citizen of the United States can, while he remains within the United States, escape their constitutional jurisdiction, either by adoption into a tribe of Indians, or any other way. But the error in all this consists in the idea that any man, citizen or not citizen, becomes divested of his allegiance to the United States, or throws off their jurisdiction or government, in the fact of becoming subject to any local jurisdiction whatever. This idea misconceives entirely the whole theory of the federal government, which theory is, that all the inhabitants of the country are, in regard to certain limited matters, subject to the federal jurisdiction, and in all others to the local jurisdiction, whether political or municipal. The citizen of Mississippi is also a citizen of the United States; and he owes allegiance to, and is subject to the laws of, both governments. So, also, an Indian, whether he be Choctaw or Chickasaw, and while subject to the local jurisdiction of the councils and courts of the nation, yet is not in any possible relation or sense divested of his allegiance and obligations to the government and the laws of the United States.

Thus, it is clear as day, that the premises of the argument utterly fail, and therefore afford support to no conclusion. Cheadle may be subject to the jurisdiction of the Choctaws without affecting his allegiance to the United States; and of course his incapacity to divest himself of that allegiance does not aid us to determine whether he is or not subject to the jurisdiction of the Choctaw nation.

If the Chickasaws were still resident within the state of Mississippi, it is not to be doubted that this state, whilst not encroaching on any lawful jurisdiction of the United States, might take to itself the jurisdiction of all controversies to which any one of its citizens might happen to be a party, even although such citizen should, so far as he might possess the power, have naturalized himself, by marriage or adoption, into the Chickasaw nation. But the Chickasaws are now wholly without the limits of any state, or of any organized territory of the United States.

In regard to Indians thus situated, also, it cannot be doubted that the Congress of the United States may exclude a citizen from the jurisdiction of any Indian nation, even although such citizen shall have done everything possible to merge his personality and his rights in the body of such Indian nation. But has Congress, in fact, done this? That is the primary question.

Now, among the provisions of the treaty of Dancing Rabbit Creek are several of a very significant character, having exclusive reference to the question of *criminal* jurisdiction.

In the first place, it provides that any Choctaw, committing acts of violence upon the person or property of "citizens of the United States," shall be delivered up for trial and punishment by the laws of the United States; by which also are to be punished all acts of violence committed upon persons or property of the Choctaw nation by "citizens of the United States." Provision less explicit, but apparently on the same principle, is made for the repression or punishment of theft. General engagement is made by the United States to prevent or punish the *intrusion* of their "citizens" into the territory of the nation. (Arts. 6, 7, 9, 12.)

In the second place, the Choctaws express a wish in the treaty that Congress would grant to the Choctaws the right of punishing, by their own laws, "any white man" who shall come into the nation and infringe any of their national regulations. (Art. 4.) But Congress did not accede to this request. On the contrary, it has made provision, by a series of laws, for the punishment of crimes affecting white men, committed by or on them in the Indian country, including that of the Choctaws, by the courts of the United States. (See act of June 30, 1834, 4 Stat. at Large, p. 729, and act of June 17, 1844, 5 Stat. at Large, p. 680.) These acts cover, so far as they go, all crimes except those committed by Indian against Indian.

But there is no provision of treaty, and no statute, which takes away from the Choctaws jurisdiction of a case like this, a question of property strictly internal to the Choctaw nation; nor is there any written law, which confers jurisdiction of such a case on any court of the United States. The Agent admits that, if the courts of the Choctaws have not jurisdiction, the case must depend for its decision on the executive authorities of the United States.

Such a conclusion is suicidal. How shall the President of the United States adjudicate upon a mere question of *meum* and *tuum*, a right of property, possession, inheritance, succession, usufruct, or whatever it may be, in controversy between private individuals in the United States? How shall any subordinate executive agent of his do this? A judgment or decree of any such executive agent, disposing of any such question, and giving title to the successful

party, would be a new and strange thing in the jurisprudence of the United States.

All the judicial power of the federal government is derivative from some provision of the constitution or of acts of Congress passed in accordance with it. Those acts take to the courts of the United States the punishment of crimes to which a citizen of the United States is a party, when committed in the Choctaw nation; but they do not draw to those courts jurisdiction of a question of property arising within the Choctaw nation. The conclusion seems to me irresistible, not that such questions are justiciable nowhere, but that they remain subject to the local jurisdiction of the Choctaws.

The United States assure to the Choctaw nation "the jurisdiction and government of all the persons and property which may be within their limits west, and secure said Choctaw nation from and against all laws except such as from time to time may be enacted in their own national councils, not inconsistent with the constitution, treaties and laws of the United States, and except such as may be, and which have been, enacted by Congress, to the extent that Congress under the constitution are required to exercise a legislation over Indian affairs." Can there be anything more explicit? The general rule is competency of the local jurisdiction, saving exceptions. Exception is to be shown. If a thing be not taken out by exception, it remains in the general rule. Here, the questions of exception are, first, the universal one, of the constitution, treaties and laws of the United States; and, secondly, the special one, (which, being included in the universal one, it did not need to specify,) of acts of Congress regulating the affairs of the Indians.

Now, it is admitted on all hands, and by the intelligent persons, who speak for the Choctaw nation, admitted as distinctly as may be, that Congress has "paramount right" to legislate regarding this question, in all its relations. It has legislated, in so far as it saw fit, by taking jurisdiction in criminal matters, and omitting to take jurisdiction in civil matters. Its action in this respect accords entirely with the tenor of the treaty of Dancing Rabbit Creek; for while that saves, or omits to concede, the criminal jurisdiction, it is absolutely silent on the question of civil jurisdiction. By all possible rules of construction the inference is plain, that jurisdiction is left to the Choctaws themselves of civil controversies arising strictly within the Choctaw nation.

This consequence is in conformity with all the analogies of law, according to which a judicial question of *meum* and *tuum* appertains to the local jurisdiction, whatever may be the ultimate political sovereignty.

It is in conformity with simple justice; for nothing is more unreasonable than that a party shall proceed to enjoy all the advantages of a member of the Chickasaw nation, including participation in its government, as well as pension and head-rights held in common between him and his children, undoubted members of the Chickasaw nation, and that he then shall, in a judicial question of that very property, set up foreign privilege as a ground of exemption from the jurisdiction of the local courts of the Choctaws.

Nor is there anything in this consequence, which conflicts, in the least degree, with the nature and theory of our government. Ours is a system of complex federation and of ramified and interwoven jurisdictions. Sometimes the jurisdiction is a mere question of place, as in the District of Columbia; sometimes compounded of place, of subject, and of persons, as in the ordinary jurisdiction of the District and Circuit Courts of the United States.

As to the general question of allegiance, it is palpable that this has no necessary connection with judicial jurisdiction. A citizen of the United States subjects himself, by voluntary residence, to the authority of the state of New York; but he does not, in so doing, lose his rights, or impair his obligations, towards the United States. A citizen of Massachusetts subjects himself, by voluntary residence, to the jurisdiction, political or judicial, of a county within the state, or of a city within the county, and it may be, of a ward or parish within the city; but the succession of jurisdictions within jurisdiction, by which he is governed, does not affect the question of his allegiance either to the state of Massachusetts or to the United States.

Nay, a Frenchman or Englishman, residing in the United States, has to submit many questions of right to the local courts, as an American must in France or England; but the national allegiance is not touched in either case.

While, therefore, we see and acknowledge that the question of allegiance is a non-essential in the question of judicial competency, it may not be amiss to dismiss another fallacy behind all this, which is the doubt, suggested by some legal authorities, whether a citizen of the United States can lawfully enter and become a member of any Indian nation?

When it is affirmed or intimated that, by reason of the question of allegiance, or of any other relation to the constitution, a citizen of the United States cannot lawfully enter into an Indian nation, a compound error is committed. The idea seems to assume, unconsciously, that the Indian nation constitutes a *foreign* state, — for how else can the question of change of allegiance arise? Then, if the Indian nation be a *foreign* state, why may not a citizen of the United States transfer his allegiance to it? Is not the right of changing allegiance at will a fundamental doctrine of our political institutions? But the Indian nations are not *foreign* states; they are domestic communities; and, as a citizen of the state of Virginia may, by change of residence, throw off the local authority of Alexandria, and take on that of Richmond, without affecting his allegiance to the state of Virginia, or by change of residence transfer his allegiance from the state of Virginia to that of Maryland, without affecting his allegiance to the United States, so may a citizen of the state of Tennessee become a member of the Choctaw nation, without affecting his allegiance to the United States.

In the treaty of New Echota, which effected the removal of the Cherokees to the west of the Mississippi, and established the existing political *status* of that nation, there is a very significant phrase, pertinent to the present question, by which the United States guarantee to the Cherokees "the right, by their national councils, to make and carry into effect all such laws, as they may deem necessary, for the government and protection of the persons and property within their country, *belonging to their people or such persons as have connected themselves with them.*" (7 Stat. at Large, p. 481.) Here is the most unequivocal recognition of the right of persons not Cherokees to be aggregated to the Cherokee nation, and subject to its laws.

It is true, that this particular phrase does not occur in the treaty of Dancing Rabbit Creek, in the same connection as in that of New Echota, but the premises of jurisdiction are the same in both cases; and it was never intended to concede to the Cherokees any larger local jurisdiction than that conceded to the Choctaws. Both cases are subject to the same general rules of public law.

I might leave the matter to rest here, on the stable foundations of the constitution, treaties, and acts of Congress; but it seems due to the Agent to explain whatever

there is, in the opinions of my predecessors, having any possible reference to the question of the jurisdiction of the courts of the Choctaw nation.

Mr. Attorney-General Berrien was called upon, in 1830, to determine whether a citizen of the United States, by entering territory of the Cherokees, within our limits, and becoming adopted as one of them, can claim to be exempted from the laws of the United States which regulate intercourse with the Indians, — and he decided, and beyond all doubt or controversy decided rightfully, that a citizen of the United States could not, by establishing himself within the limits of the Cherokee nation, and becoming incorporated with it by whatever form, withdraw himself from the operation of the laws of the United States. Mr. Berrien reasoned out this conclusion by the premises that the jurisdiction of the United States is complete throughout all its extension; that the Indians within it are subject to our jurisdiction, and are not independent states; that no citizen of the United States can assume any foreign allegiance *within* the United States; and that if he could, yet that, whether Cherokee by birth or Cherokee by adoption, he still remains within the scope and subject to the operation of the laws of the United States. (Opin. vol. i, p. 745.)

Considering that this opinion was delivered at a time when the relation of the Indians to this government was yet *sub lite*, previous to the decisions of the Supreme Court, in the case of *Cherokee Nation* v. *Georgia*, 5 Pet. 1, and in that of *Worcester* v. *Georgia*, 6 Pet. 515, it is remarkable for its general correctness; and it is, therefore, quite unnecessary to criticise any doubtful expression occurring here and there in it, if there be any, which might require to be qualified in application to the present case of the Choctaws.

Another opinion cited in the controversy is that of Mr. Attorney-General Butler, who, in 1834, ruled that, as a citizen of the United States, though residing in the Choctaw nation, and made by adoption a member of it, did not become subject to the *criminal* jurisdiction of the courts of the nation, so neither did his slave. (Opin. vol. i, p. 939.) Nothing in the premises of this opinion, or in its conclusion, affects the present case. We have seen that the United States, by the treaty of Dancing Rabbit Creek, retained the criminal jurisdiction as relates to citizens of the United States, and by act of Congress have provided

for its exercise within the Choctaw nation; but they did not reserve by treaty the civil jurisdiction, nor have they assumed it by act of Congress:

The Agent also cites an opinion of Mr. Attorney-General Nelson, delivered in 1843, on the question whether a person, who has Cherokee Indian blood in his veins, but pretends to be a lawful citizen of the state of Georgia, and who commits a crime while residing as a licensed trader within the territory of the Cherokee nation, is amenable to the laws of the United States, and entitled to a trial under them, instead of the tribunals and laws of the Cherokee nation. In this case, Mr. Nelson very properly determines that the answer depends on the question of fact, whether the party is or not a citizen of the United States. (Opin. vol. ii, p. 1640.) I perceive nothing in this to affect the present question.

There is a modern decision of the Supreme Court of the United States, which throws much light on the general question, and which affirms the distinction herein suggested, between the criminal responsibilities and the civil rights of white men adopted by Cherokees (or Chickasaws and Choctaws). The court re-affirm the doctrine of the subjugation of all Indians to the United States; they decide that a white man, adopted by the Indians, remains amenable to the *criminal* jurisdiction of the United States; and at the same time they admit that "he may, by such adoption, become entitled to certain privileges in the tribe, and *make himself amenable to their laws and usages.*" *United States* v. *Rogers*, 4 Howard, 567, 573.

The constitution permits, and the treaty of Dancing Rabbit Creek expressly concedes, the exercise by the Choctaw nation of certain of the powers of self-government, in subordination always to the laws of the United States. In the exercise of these powers, the nation has proceeded to organize itself as a republic, with elective chiefs, councils, and judges, on the model, as near as may be, of the institutions of the people of the United States. They have enacted a code of laws, which, if less numerous and voluminous, may not on that account be less convenient and suitable to their condition, than the laws which prevail in other parts of the United States. Justice and policy alike demand that, so long as they are allowed to remain a separate people, they should be protected and encouraged by us in their laudable attempts to maintain local order, and to acquire and cultivate the arts of civilization and of

peace, of which the example is set before them by us, the master race of America.

Congress has seen fit to withhold from the Choctaw nation all criminal jurisdiction over white men within their territory, but not to withhold from them civil jurisdiction over such white men as of their own free will and accord choose to become members of the nation. Congress might, if it pleased, prohibit any white man from intermarrying with Indians, and from acquiring, in this or any other way, the tribal rights of person and property; but it has not done so; and a white man, who thus enters into the nation, has no just cause of complaint in being held amenable, in questions of local right, to the jurisdiction of the tribunals of the nation. When a white man freely seeks, and, seeking, is permitted to enjoy, the privileges of a Chickasaw or a Choctaw, and then presumes to set up those very privileges as the pretext of lawless independence of any judicial authority whatever, he forfeits all claim to special consideration on the part of the executive of the United States.

Entertaining this opinion, it is neither necessary, nor indeed proper, for me to examine the particular case, which gives occasion to the question. That will be judged and determined by the competent legal authorities of the Choctaw nation.

I take leave to add, that it is not intended, by anything which precedes, to prejudge any question which may arise under the acts for the regulation of intercourse between citizens of the United States and the Indians, or to impair the jurisdiction of the Indian agents in regard to persons trading with the Indians, or sojourning among them; but only to determine the competent forum of persons legally belonging, whether by origin or adoption, to the particular Indian nation, and of property of such persons held by them as legal members of such Indian nation.

I have the honor to be,

Very respectfully,

C. CUSHING.

Recent American Decisions.

District Court of the United States for the Northern District of Ohio. Feb. Term, 1856.

WOLVERTON, *qui tam*, *v.* LACEY.

Consolidation of actions — Debt for penalties under Stat. 1790, *c.* 29, § 1, (1 *Stat. at Large*, 131) — *Declaration in — Female seamen — Shipping articles and maritime jurisdiction on the lakes.*

Where the plaintiff has several causes of action which may be joined, one suit only should be brought, otherwise the court will compel a consolidation with costs of the application therefor.

In an action of debt, to recover several penalties under the act of Congress, of 1790, ch. 29, § 1, against the master of a vessel for shipping seamen without articles, a single count for all the penalties is sufficient.

A female shipped on board a vessel as cook and steward, is entitled to all the rights and subject to all the disabilities of a seaman or mariner; and the provisions of the statute concerning shipping articles, apply as well to such cook and steward as to the sailor before the mast.

The provisions of this act imposing a penalty on masters of vessels in the merchant service for shipping seamen without articles, extend to the merchant marine upon the lakes and public navigable waters connecting the same.

Independent of the act of congress of Feb. 26, 1845, (5 Stat. at Large, 726,) under the constitution the maritime law of the United States has the same application to cases upon the lakes as upon tide waters.

WILSON, J. — This is an action of debt, brought to recover penalties under the first section of the act of congress of July 20, 1790.

The declaration contains but one count, and is, as to form and material averments, substantially in accordance with the established precedents for declarations on penal statutes. The plaintiff alleges that the defendant, on the 6th of May, 1855, was master of the schooner Yorktown, a vessel of over fifty tons burden, and navigating the waters of the lakes, and that with her he made a voyage from Cleveland to Chicago. That he employed and shipped on board for said trip, at Cleveland, ten persons as seamen in various capacities, one of the ten a female cook. That said voyage was performed with such crew, none of whom had signed shipping articles of agreement, as re-

quired by the statute. Whereby he insists that the defendant has forfeited the sum of twenty dollars for each of the persons so employed, and thereby claims that an action *qui tam* hath accrued to him, to recover for himself and the United States the aggregate sum of two hundred dollars.

The defendant's plea is *nil debet.* During the progress of the trial several questions have been raised by the defendant's counsel, and argued on both sides with much ability. One ground taken is, that separate suits should have been brought for each penalty. Another is, that if it is competent to consolidate in one suit the actions to recover the several penalties, then the declaration should contain separate counts for each penalty. The third and main point is, that the first section of the statute of 1790 has no application to the merchant marine of the lakes.

This action is properly brought so far as relates to the consolidation in one action of the suits to recover these penalties. The law abhors an unnecessary multiplicity of suits. Where a plaintiff has two or more causes of action which may be joined in one, he ought to bring one suit only; and in such case, if he commences more than one, he may be compelled to consolidate them, and pay the costs of the application. 1 Chitty's Plead. 228. This is a principle of law designed to protect a defendant from an unreasonable accumulation of costs. In this case, had the plaintiff commenced ten different suits, the court, on motion, would have ordered a consolidation at his costs.

We are equally clear that the second objection is not well taken. If the action of debt is the proper mode to recover penalties accruing under this statute, (and this seems not to be questioned,) then a single count is sufficient. It matters not whether it is alleged that the defendant shipped one or a dozen seamen without articles for the voyage, provided the plaintiff in his declaration has set forth specially and accurately the facts bringing the defendant within the statute declared on. The object and purpose of pleading is to apprise the opposite party of the facts constituting the cause of complaint against him; and they should be set forth with sufficient certainty, that the record may be a protection against future recovery. We do not see how the defendant would be better informed as to the subject-matter of the suit, and thereby be enabled to make a better defence, had this declaration contained a count for each penalty. Each seaman is named and

described, to the number of ten, the full complement of the crew on the particular voyage. The defendant is thus as fully informed of the acts complained of, as if particularly set forth in separate counts. It is competent to embrace in one count several penalties upon a penal statute. *The People* v. *McFadden*, 13 Wend. 396.

Equally well settled is another point raised in the case, viz.: that a female may be entitled to all the rights and subject to all the disabilities of a seaman or mariner. Since the decision of Lord Stowell (in the case of *The Jane and Matilda*, 1 Hagg. Adm. 187), this doctrine has been fully recognized by the courts of England and the United States. It is now well determined that the term mariner includes cooks, stewards, carpenters, coopers, and firemen as well as sailors. In fact, all on board the vessel, employed in her equipment, her preservation, or the preservation of the crew, are denominated seamen. And hence services performed by a female in the capacity of cook, entitle her to a proceeding *in rem* to recover her wages therefor as a mariner. Gilpin, 534; Conkling's Adm. 72; Flander's Mar. Law, 354, 355. The requisition of the statute, therefore, as to signing shipping articles, extends as well to the cook or steward as to the sailor before the mast.

Without further discussion of questions which may be regarded as incidental to the main matter in controversy, I proceed to the inquiry, Does the act of July 20th, 1790, extend to and become operative for the government and regulation of seamen engaged in the merchant service on the lakes?

This question has been raised and argued by counsel as if this suit was a proceeding in the admiralty, and in its determination, the court should apply the rules and be governed by the principles of admiralty law. It is insisted that the statute of 1790 never was intended for, and in fact never had any binding force and effect on waters not subject to admiralty jurisdiction; that until 1845 there was no admiralty law applicable to the lake marine; that the act of Feb. 26th, 1845, extending the jurisdiction of the district courts to certain cases upon the lakes, in providing, "that the maritime law of the United States *so far as the same is or may be applicable thereto*, shall constitute the rule of decision in such suits," vested in the courts judicial power to determine the question of the applicability of the statute of 1790 to the lakes. And the defendant resists such ap-

plication on the ground of public policy; that it would be detrimental alike to seamen and owners of vessel property; that the requirements of the statute have never been enforced here, owing to the want of adjudged cases as authority, and that it would be as difficult to make seamen sign shipping articles as required by the first section, as it would be absurd to enforce the provisions of the eighth section as to vessels engaged in the Canada trade. This court has cognizance of this suit by virtue of the ninth section of the act of 1789, which declares that the district courts shall have exclusive original jurisdiction of all suits for penalties and forfeitures under the laws of the United States. This proceeding is not a suit in a case of admiralty and maritime jurisdiction. It is a common law action, and the process, pleadings, and proceedings are in accordance with the practice and principles of the common law.

But suppose we grant the point claimed by the defendant, viz.: that the statute of 1790 is operative only on waters subject to admiralty and maritime jurisdiction, wherein does this benefit the defendant?

In passing the act of 1845 (at least in the provisions before referred to) congress performed a work of supererogation. Since the decision in the case of *The Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443, it has been a settled principle of law, that admiralty jurisdiction is not confined to tide-water, but extends to the public navigable waters of the United States. The narrow and restricted definition of *tide-water admiralty jurisdiction*, as declared by the courts of England and explained by English writers on the subject, is now rejected by the federal courts. The supreme court has boldly, and we think wisely, overruled the case of *The Thomas Jefferson*, 10 Wheat. 428, and *The Steamboat Orleans* v. *Phœbus*, 11 Pet. 175; and in so doing has shown the unreasonableness of giving a construction to the constitution which would measure the jurisdiction of the admiralty by the tide. The great and increasing magnitude of the commerce of the lakes, and the almost fabulous increase of the lake marine, has finally caused the courts to pause and inquire, whether, in all its varied rights and business arrangements, there is anything to distinguish this great lake commerce from the other maritime commerce of the world. It has been truly said that "a salvage, an average, a bottomry, a case of wages on Lake Erie, are as clearly cases of admiralty and mari-

time jurisdiction, and have reason to be subject to the same rules and regulations of maritime law, as similar cases on the Black Sea, the Baltic, or on Long Island Sound. Their nature is the same everywhere — they are maritime everywhere."

It is not surprising, therefore, that for the purpose of extending equal justice to all, the supreme court should have departed from its narrow construction of the constitution, as given in the case of the Thomas Jefferson, and placed the admiralty jurisdiction upon a basis of perfect equality in the rights and privileges of the citizens of the different states, not only in the laws of the general government, but in the mode of administering them. This is done in the case of the Genesee Chief.

Independent of the act of 1845, under the constitution, the maritime law has the same application to cases upon the lakes as to those upon tide-waters. Congress, doubtless, has the power to prescribe the *mode of proceeding* in admiralty, as was done by the act of 1845, in saving to the parties the right of trial by jury. The admiralty jurisdiction on the lakes, however, lies deeper and beyond the act of 1845. Hence the objection that the statute of 1790 is operative *only* on waters subject to the admiralty jurisdiction, has no force in the case.

Besides, there is nothing in the language of the law of 1790 restricting its operations to cases upon tide-water. Its language is, "every ship or vessel," "every seaman or mariner," without any allusion to salt water or the tides; clearly covering all cases of seamen employed and serving on ships or vessels engaged in the merchant service on the public navigable waters of the United States. The registry and enrollment act of 1793 is not more specific than this as to the waters on which it should apply; yet its binding force and effect upon the shipping of the lakes has never been questioned or disregarded in practice.

Aside from the importance of divesting the law of its uncertainty, it is in our opinion equally important as a matter of public policy, that the first section of the act of 1790 should be enforced here. The loss of life and property on the lakes is annually on the increase. From authentic sources it is ascertained that in the single year of 1854, the loss of life was one hundred and nineteen persons, and the loss of property $2,187,285 by disaster. These alarming facts induced this court, at a recent session of the federal grand jury, to call the attention of that intelligent

body to this subject; and the jurors were instructed to inquire whether these losses were occasioned by the non-compliance with the statute of 1849 in relation to signal lights, and the steam vessel acts of 1838 and 1852. The grand jury, after devoting much time and examining a great number of witnesses, reported to the court, among other things, "That a frequent cause of disaster on the lakes has been the want of sufficiency of seamen and a lack of efficiency in them, and a want of control on the part of masters of vessels over their men. This results in a great part from the neglect of masters of vessels to comply with the statute requiring them to have their men sign shipping articles. Insubordination results at times when legalized authority is most needed. The men abandon the vessel, (perhaps in the first port,) and she is obliged to return, it may be, without an adequate supply of hands, or if there is, a continual changing makes them always strangers to the vessel and the ways of working her."

We are satisfied that a just and fair interpretation of the law, as well as the dictates of a sound public policy, demand the enforcement of the first section of the statute of 1790.

This brings us to the testimony in the case. It is in evidence that in May, 1855, the schooner Yorktown (of which the defendant was master) was a registered vessel of over fifty tons burden, and that she made the trip from Cleveland to Chicago with a crew of ten persons, as charged. Four only of the persons employed on the vessel for the trip have been sworn and examined in the case. These are Daniel Chottison and his wife Jane, Samuel W. Wolverton and Robert McKay. They all testify that on or about the 5th of May, 1855, they were shipped on board of said vessel at Cleveland, in the various capacities of mate, sailor, and one of them, Jane Chottison, as cook; that they made the trip from Cleveland to Chicago and back, and that neither of them signed shipping articles, and that they had no knowledge of any such papers on board the vessel. Neither of the witnesses were able to state whether the remainder of the crew signed shipping papers or not. Some conversation had in the presence of the defendant, between two of the crew, at the time they were paid off and discharged in Chicago, is in evidence, tending to show that they also had not signed articles. But the conversation was not addressed to the defendant, and it is doubtful whether he, in fact, heard it; at all

events, it is too vague and uncertain to justify the court in giving it any weight. As to the remaining six men of the crew, there is no evidence before us that will warrant a charge of delinquency of the defendant and subject him to penalties. We therefore pronounce for four penalties, and judgment is accordingly rendered against the defendant for the sum of eighty dollars and costs of suit.

John Crowell, and *F. T. Wallace*, for the plaintiff.

D. K. Carter, and *D. O. Morton*, District-Attorney, for the defendant.

District Court of the United States for the District of Massachusetts. January, 1856.

THE CLARA M. PORTER.

Samuel Foster, et al., claimants.

Collision — Rules of navigation.

Where a vessel comes down with the wind free in an open sea, to speak another vessel which is close hauled on the starboard tack, the former has the entire duty of so manœuvring as to avoid a collision, and it is the duty as well as the right of the latter, in case a collision is apprehended, to keep her course.

If a vessel with the wind free attempts without necessity to cross the bows of a vessel close hauled, and a collision takes place, the former vessel will be held *primâ facie* to be in fault.

WARE, J. (holding the court for SPRAGUE. J.) — The schooner Jenny Lind, a vessel of about eighty tons burthen, duly licensed for carrying on the codfishery, sailed from Southport, in Maine, on the 4th of April, fitted out for a fishing voyage on the Bank fisheries. On the 5th of May, near Sable Island, while pursuing the objects of her voyage, and having on board two hundred and seventy quintals of fish, being then under sail, close hauled to the wind on her starboard tack, she saw a sail ahead at the distance of one-and-a-half or two miles, which proved to be the Clara M. Porter. The Jenny Lind was sailing on a north-westerly course, with a six knot breeze from the north-east, and the vessel seen was sailing in nearly, if not precisely, in an opposite direction on her larboard tack. She was seen from the Jenny Lind over her weather-bow, and consequently the line on which she was sailing was

to the windward. The vessels being under sail, on lines nearly, if not exactly, parallel, the Clara M. Porter would have passed to the windward. But soon after she was seen, she changed her course, put off before the wind, and came down before it, with the intention of crossing the line of the Jenny Lind and speaking her at the leeward. From some miscalculation or mismanagement in one or the other vessel, or in both, instead of passing the Jenny Lind, as she intended, she came directly in collision with her, striking her amidships, head on, and damaged her so severely, that within half or three-quarters of an hour she sunk. Her crew saved themselves by escaping on board the Clara M. Porter.

The Jenny Lind being close hauled on her starboard tack, had, by the well-known law of the sea, the right of way. She had not only a right to hold on her course, but ordinarily, when a vessel thus close hauled on this tack sees another sail approaching, with the wind free, and there is a possible danger of collision, it is her duty to hold her course, and it belongs to the vessel having the wind free to keep clear of her. In this case, the Clara M. Porter having the entire command of her motions, and with ample sea room, if there had been danger of meeting, was bound to give way and avoid it. The collision would have been avoided if she had held on her course, which would have carried her to the windward. If she wished to speak the Jenny Lind, she should have changed her course only so far as to have passed her within speaking distance at the windward, and then have crossed her track astern, if that was her object. The danger of collision would then have been avoided. Instead of this, she attempted the experiment of crossing her bows. It requires but little nautical experience to inform us that this is a hazardous manœuvre, which ought not, in ordinary cases, to be attempted. If it is, without something like a necessity requiring it, and a collision is the consequence, the party making the attempt must be held *primâ facie* in fault. In this case, with a fair and moderate breeze, and an open sea, no such necessity could exist.

It is admitted in the argument for the respondent, that the Jenny Lind had a right to hold her course, and it is argued that if she had done so, the Clara M. Porter would have crossed her line ahead safely and passed to her lee; but it is contended that the Jenny Lind, instead of holding on her course, first bore away before the wind and then

luffed back into her first course, and that the collision is to be ascribed to this cause; and that she was in fault, first, by deviating and bearing away, and again, after doing this, in luffing back. The argument proceeds on the ground that the Jenny Lind was bound to hold her course. This is the important and turning point in the case. If the Jenny Lind did what is imputed to her, it being her duty to hold her course, it is contended that the collision must be ascribed to her fault, and if the counsel is correct, even admitting that the Clara M. Porter was in fault in attempting the hazardous experiment of crossing the bows of the Jenny Lind, the collision must be considered as having been occasioned in part by faults on both sides. If so, then according to the recent decision of the Supreme Court in the case of *The Schooner Catherine* v. *Dickinson et al.*, 17 How. 170, the loss is to be equally divided between the two vessels. Such, also, is the rule of the English admiralty. *The Monarch*, 1 W. Rob. 26; *Hay* v. *Le Neve*, 2 Shaw's Appeal Cases, 391.

The evidence on this point is conflicting. The two principal witnesses for the libellants are Silas Orne, the master, and Baker Orne, his brother, and the mate, both part-owners of the Jenny Lind and parties to the suit, and admissible as witnesses in such cases only from necessity. But both of them were on deck, Baker having the helm, and both in situations in which they must have known whether their vessel was put off before the wind or not; and they both swear positively and directly that she was not; that she had, for a considerable time before the Porter was in sight, been on that course, and that it was at no time changed. The captain states that he several times hailed the Porter, and this is confirmed by Captain Woodbury, to put her wheel down and luff, but though she seemed to change her wheel back and forth, no change was made in her course. Most of the crew of the Jenny Lind, just before the collision, were below at dinner, and on hearing the captain hail they hurried on deck. Their statements on this point are, consequently, not so clear nor so much to be relied on, but as far as they go, they fully confirm the testimony of the master and mate.

On the other hand, Captain Woodbury, of the Clara M. Porter, says, that when he was coming down before the wind, at twice hailing distance, the Jenny Lind appeared to put off, and fearing a collision, he put his wheel down; that he heard the hail from the Jenny Lind to put his

wheel down, but that it was then hard down, and that the Jenny Lind, after bearing away, appeared to him to come to. Stewart, an experienced seaman on the Porter, says, that he saw the Jenny Lind on the wind, and that if she had kept her course, the Porter would have passed ahead of her, or she would have come into us; but that she kept off, and then he feared a collision. Foster, who was at the helm of the Clara M. Porter, says, that after they approached the Jenny Lind, coming down before the wind, she put off more free; that he intended to cross her bows, and come under her lee. These witnesses confirm the testimony of Captain Woodbury, that the Jenny Lind, as they approached her, put off more before the wind, but none of them say that after she put off she again luffed back before the wind. Now, if the Jenny Lind put off more before the wind, and the Clara M. Porter was also before the wind, the latter vessel, if she came in collision, must have struck the Jenny Lind obliquely. But she, in fact, struck her head on, perpendicularly. The only way by which the manner of the collision can be explained, if the Jenny Lind went off before the wind, is by supposing that she came back again as stated by Captain Woodbury. But there is, it appears to me, an intrinsic improbability in this supposition. If it was done by the Jenny Lind shortly before the meeting, as it was, if at all, it would only make the collision more dangerous, by converting an oblique into a perpendicular collision. Besides, if I have the testimony of the witnesses correctly, no one of them confirms Captain Woodbury in this particular.

The testimony of the two Ornes is fairly open to the observations made upon it, as coming from deeply interested witnesses. But similar remarks will apply with about the same force to Captain Woodbury, who feels as strong an interest in justifying himself to his owners; and will also apply with diminished force to all the testimony on one side and the other. The crews of each vessel probably had a natural inclination to find their own vessel clear of blame.

There then remains the testimony of the witnesses from the Tamerlane. At the time of the collision, and for some time before, the Tamerlane was from half a mile to a mile astern of the Jenny Lind, the latter being a point or a point and-a-half on her starboard bow, and sailing on the same course. Her crew were all, or nearly all, on deck, and the depositions of three of them have been taken by the libel-

lants. They state that they were on deck observing the two vessels in plain sight, with a full opportunity of noticing their movements. They were so situated, sailing nearly on the same line with the Jenny Lind and almost directly astern, that if she had changed her course it could clearly be seen from their vessel. They all concur in saying that there was no change in her course, and fully confirm the testimony of her crew.

The Tamerlane was from the same port with the Jenny Lind; the masters and crews of the two vessels neighbors and acquaintances; and the counsel for the respondents has, with some reason, argued, that in a controversy between the owners of the Jenny Lind and strangers, their sympathies would naturally be with their townsmen and friends. Some deduction, it is supposed, ought to be made from their testimony on this account. I do not mean to deny that this circumstance might be entitled to some consideration, if their testimony consisted of minute facts, each of minor importance in itself, and deriving their importance from the combined effects of the whole, and from the coloring given to the facts. But their testimony is to a single fact, and one, which from their situation, they could observe and know, if not with absolute certainty, at least with a pretty near approximation to it. To this fact their testimony is direct and precise. We are, then, reduced to the necessity of supposing that it is, if not certainly true, at least probably so, or of imputing wilful prevarication to the witnesses.

An attempt is made by the claimants to discredit the two principal witnesses for the Jenny Lind, her master and mate, by showing that they have, at different times, made declarations and admissions inconsistent with their testimony given in court. But their evidence does not appear to me materially to impair their credit, sustained as their testimony is by other witnesses.

My opinion, on the whole proof of the case, is, that the collision was occasioned by the fault of the Clara M. Porter, and the decree must be against her. The case will go to a commissioner to ascertain the amount of the damage.

R. H. Dana, Jr., for the libellants.

Bartlett and *Thaxter*, for the claimants.

December, 1855.

United States *v.* Lunt.

Forcing on shore and leaving behind seamen.

Masters must act on their own responsibility in leaving men in foreign ports, on account of misconduct. It is proper for a master to take the advice of the consul as of any other judicious person, but his opinion is only advice.

To justify leaving men in a foreign port, there must be an urgent physical or moral necessity, *i. e.* such an exigency as would control the judgment of men of reasonable firmness for shipmasters. And a greater exigency would be required to justify leaving men at some ports than at others.

On a criminal prosecution for such an offence, the defendant is not guilty if he acted under an honest mistake of judgment, and not from malice, *i. e.* from the intentional violation of known duty.

This was an indictment against the master of the ship Humboldt, for forcing on shore and leaving behind, at Manilla, three of his crew. Two previous trials, one of Captain Lunt for shooting at his crew, and the other of the rest of the crew for mutiny, had resulted in the acquittal of Captain Lunt, and the conviction of the men. Captain Lunt offered in his defence, the certificate of the American consul at Manilla, that the men were detained by him to be sent home in another vessel for trial on a charge of mutiny. This was objected to, and ruled out as incompetent. There was then no direct proof that the removal and detention of the men was by the advice or sanction of the consul, as none of the officers or crew were on shore, and the consul did not come on board. The only evidence was, that the master put the men in irons, took them ashore with him in a public guard boat, with soldiers, and that the men did not return in the ship.

Sprague, J. instructed the jury that there is no statute of the United States authorizing a consul to take seamen from a vessel for criminal conduct, and send them home in another vessel for trial. It is customary for consuls to do so, it is said, under instructions from the department of state, but they have no jurisdiction, and their certificates are not evidence. The master must act on his own responsibility in leaving men in foreign ports on account of misconduct. It is proper for the master to take the advice of the consul, as of any other judicious person, but his opin-

ion is only advice, and the responsibility rests with the master. In this case there is no direct evidence connecting the consul with the transaction in any manner. The question is (1) was the master justified? and (2), if not justified, did he act of malice? First, as to the justification. The maritime policy of the country, as well as the contract of the men, make it the duty of the master to bring home every seaman he takes out with him. If he leaves any man abroad, except for certain causes, he is liable to the man in a civil action, and is liable on his bond at the custom house. If, in addition to this, he leaves a man maliciously, he is liable to a criminal indictment. The justification set up here is, that it was dangerous to bring these men home in the vessel. They were the leaders in the mutiny. To justify the leaving them in a foreign port, there must be a necessity. This is not necessarily a physical necessity, but may be a moral necessity. By a moral necessity, in this connection, is meant such an exigency as would control the judgment of men of reasonable firmness for shipmasters. A greater exigency would be required to justify the leaving a man in a distant port, where there was no consul and no American residents, or where the government is not recognized as an enlightened nation, than in a port of easy communication, where there is a consul, and where the government is on friendly and full terms of diplomatic intercourse with our own. But the law is very jealous of this leaving of American seamen in foreign ports, especially if they are confined in jail there so that they are placed under the control of persons not amenable to our laws. Only a stringent necessity will justify it.

If the jury shall think Captain Lunt justified, he is to be acquitted. If they think the evidence does not establish a justification, the question then is, whether he acted of malice. The meaning of malice is, the intentional violation of known duty. If he acted under an honest mistake of judgment, especially after taking advice of proper persons, he is not guilty criminally. If he acted in known violation, or in wilful indifference, or in disregard of duty, he is guilty.

After being out seven hours, the jury reported that they had agreed on a verdict of not guilty as to the leaving of one of the men, and disagreed as to the other two, and were discharged.

B. F. Hallett, (District Attorney,) for the government; *R. H. Dana, Jr.*, for the defendant.

August, 1854.

BRUXENT *v.* TABER.

Compensation of seamen on whaling ship disabled and left in a foreign port — Right to expenses of return.

SPRAGUE, J. — The libellant, while serving as a mariner on a whaling voyage, was injured by a blow from a whale so as to be unable to render further service. The vessel afterwards went into one of the Sandwich Islands, where he was sent to the hospital and discharged from the ship by the captain and the American consul, for sickness, and paid the sum of sixteen dollars as the balance due to him for his services. In ascertaining this balance, the oil which had been taken was valued at cents per gallon, and the bone at cents per pound, and he was allowed his proportion according to his lay in the shipping articles. There was no such discharge or settlement as would bind the libellant, or deprive him of any rights further than compensation was actually received. As to the discharge, the certificate of the consul states that certain men were discharged by their own consent, and others, including the libellant, by reason of sickness. And the captain's testimony shows that no option was left to the libellant either as to the discharge or settlement, but that the captain and consul made up the account without consulting him, and paid over what they stated to be the balance, he then being entirely helpless. By the terms of the shipping articles, and the usage which has been proved, the libellant was entitled to be paid from the ultimate proceeds, in proportion to the time he was connected with the ship, compared with the time of the whole voyage, and to that mode of settlement he is now entitled, deducting what he has actually received.

The libellant originally shipped as steward, from which station he was rightfully removed, and put in the place of a common seaman, who was made steward in his stead. For the time he served as steward, he is to have the lay for which he stipulated in the articles, and for the residue of the time, the lay of the seaman whose place he took.

He was so severely injured in the service of the ship,

that he was necessarily left in the hospital abroad, and the vessel returned home without him. After remaining some time in the hospital, he left it, not cured, but lame for life by a dislocation at the hip, which can never be reduced. He remained some time at the Sandwich Islands, and then returned home. Is he entitled to recover from the owners the expenses of his return? I think that he is, upon the principles of the maritime law, and the policy and laws of the United States, for securing the return of American seamen. A seaman is entitled to the expenses of his return when discharged abroad, even when the discharge is not wrongful on the part of the master, but from necessity, as in the case of *semi naufragium.*

At the time of the discharge, the captain gave to the consul thirty-six dollars for three months wages, but the discharge of the seaman not being by his consent, the captain could not thereby relieve the ship from the obligation to provide for his return. It does not appear that the libellant received any part of the amount paid to the consul, or has been in any manner benefited thereby. He was entitled to be cured at the expense of the ship, but has made no claim on that ground.

Decree for libellant.

C. G. Thomas, for libellant; *Eliot & Pitman*, for respondent.

Supreme Court of Connecticut. June Term, 1855.

Hoag v. Hatch.

General verdict on several counts; some of which are bad — What words are actionable, per se — Instructions to jury in regard to alleged slander.

The rule in this state, that in civil, as well as in criminal cases, where there are several counts in a declaration, and a general verdict is rendered thereon, judgment will not be arrested, if any of them are good, differs from the rule in England, in civil actions, where a motion in arrest will prevail, if any of the counts are bad.

In order to render words, charging a crime, or offence, actionable of themselves, it is not sufficient that they impute to a person merely the violation of a penal, or criminal law, but they must charge him with an offence, which involves moral turpitude, or would subject him to an infamous punishment.

The plaintiff, in one count of his declaration, alleged that the defendant charged him with "having paid to one of the electors of the town of S," who was named, "m ney to secure the plaintiff's election as a justice of the peace;" and, in another count, with "having bought rum, and given it to some of the electors of that town, to secure his election to said office, and with having bought rum, and distributed it to secure his said election," but alleged no special damage to the plaintiff:

Held, that the words, laid in such count, imported not only an offence, punishable by the 17th section of the "act relating to electors and elections," (Stat. 1849, tit. xi., ch. 2,) but one involving moral turpitude.

Where the plaintiff claimed to have proved, that the defendant spoke the words aforesaid of the plaintiff, in reference to his election to said office, and the defendant requested the court to instruct the jury, that said words did not import a criminal charge, under the statute, and were not actionable, *per se*, and without proof of special damage; but the court refused to comply with this request, and instructed the jury to find whether the defendant spoke the words alleged in the declaration, and if so, whether he thereby imputed to the plaintiff the crime set forth therein: it was *held*, that such course was correct.

This was an action of slander, tried before the superior court, for the county of Fairfield, February term, 1855.

The declaration contained six counts, — only two of which, the second and fifth, are material to the present case. In the second count, the plaintiff alleged that "the defendant had a certain discourse of, and concerning the plaintiff, and of, and concerning, his election to the office of a justice of the peace, at an electors' meeting, held in the town of Sherman, on the first Monday of April, 1852, and then and there falsely and maliciously uttered and published, in the presence and hearing of sundry persons, of and concerning the plaintiff, and of and concerning his, the plaintiff's, election as a justice of the peace, at said electors' meeting, the following false, scandalous, and defamatory words, viz.: "Hoag," meaning the plaintiff, "had paid Isaac Hatch money to secure his," meaning the plaintiff's, "election," — meaning that the plaintiff had paid Isaac Hatch and other electors of said Sherman, money for voting for him, the plaintiff, as a justice of the peace, at said electors' meeting; "Hoag," meaning the plaintiff, "had sent money by Joel Joyce to Hatch," meaning Isaac Hatch, "to secure his," meaning the plaintiff's, "election to the office of a justice of the peace, at the electors' meeting, holden at Sherman, on the first Monday of April, 1852;" "Hoag," meaning the plaintiff, "had sent money by Joel Joyce to Hatch," meaning Isaac Hatch, "to buy votes," thereby meaning that the plaintiff had given money to certain of the electors of said

Sherman, for their votes for him for a justice of the peace, at said electors' meeting, and was guilty of bribery at election."

In the fifth count, the words were charged as follows: "Hoag," meaning the plaintiff, "bought rum of Isaac Hatch, and gave the same to some of the electors in Sherman, to secure his," meaning the plaintiff's, "election," thereby meaning that the plaintiff gave rum to some of the electors of Sherman, to induce them to vote for him, the plaintiff, as a justice of the peace, at said electors' meeting; "Hoag," meaning the plaintiff, "bought rum and distributed it, to secure his election," thereby meaning that the plaintiff gave, by way of gratuity, rum to certain of the electors of Sherman, for voting for him for justice of the peace, at the electors' meeting, held at Sherman, on the "first Monday of April, 1852."

The defendant pleaded the general issue, with notice of special matter to be given in evidence.

Upon the trial, the plaintiff introduced evidence to prove, and claimed that he had proved, in support of the first five counts in the declaration, that the defendant, speaking of the election of the plaintiff in the manner set forth in the declaration, said of him, "he sent money to Isaac Hatch to buy rum to secure his election,"—"he sent money to Isaac Hatch's to buy rum with to buy votes," —"he sent money, by Joel Joyce, to Isaac Hatch's, to buy rum to buy votes to secure his election," without any evidence of special damage.

The defendant claimed, that the words aforesaid, did not import a criminal charge, at all, under the statute, and if they did, they were not actionable, *per se*, and without proof of special damage, as they did not charge an offence infamous in itself, but an offence which was created by statute only, and requested the court so to charge the jury. The court did not so instruct them, but submitted the case to them, to find whether the defendant spoke the words set forth in the declaration, and if so, whether he thereby imputed to the plaintiff the crimes set forth.

The jury having rendered a verdict in favor of the plaintiff, the defendant moved for an arrest of judgment, for the insufficiency of the declaration; and also moved for a new trial, for misdirection to the jury.

Butler & Carter, and *W. F. Taylor*, in support of the motion.

I. The judgment should be arrested, because the first

four counts do not aver that any violation of the statute was committed. The words, alleged to have been spoken, do not charge that the defendant "offered money, or other thing," to any voters, by way of "gift, fee, or reward, for giving, or refusing to give, a vote" for him, as justice of the peace, or that he proffered "any gratuity, reward, or preferment, for any vote given, or to be given." They allege the paying, giving, sending of money to Isaac Hatch, not to secure Hatch's vote, but to be used by Hatch to buy rum, or votes, to secure the plaintiff's election.

The fifth count does not import anything more, than that he treated with rum, some of his personal or party friends, who, he knew, would vote for him. The words must charge some overt act; the actual commission of the offence.

II. A new trial should be granted, because the words proved and relied on, do not charge any act to have been done by the plaintiff, or Hatch, which would make them answerable to the penalties of the statute.

If the words used did import a violation of the statute, the offence itself is not of such a character, as to make them actionable, *per se*.

It cannot be said that a charge of violating any and every statute, is actionable. The rule adopted by the court in *Brooker* v. *Coffin*, 5 Johns. 191, is as broad as can safely be adopted.

Hawley, and *Belden*, and *Loomis & Warner*, contra, cited 1 Sw. Dig. 489, 490; *Miller* v. *Parish*, 8 Pick. 384; *Chaddock* v. *Briggs*, 13 Mass. 248; *Frisbie* v. *Fowler*, 2 Conn. 707; *Chapman* v. *Gillett*, 2 Ib. 40; *Lyman* v. *Wetmore*, 2 Ib. 42; 13 Johns. 124.

Storrs, J. — The verdict in this case was rendered for the plaintiff, and damages assessed, on the first five counts collectively, and on the sixth count separately. The motion in arrest of judgment is not pursued as to the sixth count, which is confessedly good. Respecting the first five counts, judgment should not be arrested on them, if any of them are sufficient; the rule here being that, in civil as well as criminal cases, on a motion in arrest of judgment, where there are several counts and a general verdict, judgment will not be arrested if any of them are good, and differing, in this respect, from the rule in England in civil cases, where a motion in arrest will prevail, if any of the counts are bad.

Under the rule thus established here, the motion in

arrest of judgment, on the first five counts, should not prevail; because, whatever might be thought of the sufficiency of the first, third, and fourth counts, we are clearly of opinion that the second and fifth counts are good. The words, as laid in each of these two counts, plainly charged the plaintiff with a violation of the provision punishing bribery at elections, contained in the seventeenth section of the "act relating to electors and elections." Rev. Stat. 1849, tit. xi., ch. 2, § 17, p. 320. Such is their clear and natural import. In the former of these counts, the words, in connection with the averments and innuendoes accompanying them, charge the plaintiff with having paid to one of the electors of the town of Sherman, who is named, money to secure the plaintiff's election as a justice of the peace, and in the latter with having bought rum, and given it to some of the electors of that town, to secure his election to said office, and with having bought rum and distributed it to secure his said election; and these charges are not qualified by any accompanying words. To hold, as the defendant claims, that the words laid in the second count, import only that the plaintiff had furnished money to Hatch, for the purpose of enabling him to buy votes for the plaintiff for said office, but that it did not appear that the money was used for that purpose, or that those laid in the fifth count, only import that the plaintiff treated some of the electors with rum, after the election, for having voted for him, would be a palpable perversion of the language of the defendant. None of the words laid in the fifth count, are fairly susceptible of the meaning thus attached to them by the defendant; and although insulated portions of those charged in the second count admit of the construction claimed by him, yet they do not at all qualify the meaning of other words in the same set, which clearly import that the plaintiff had paid, and sent, money to the voter therein named, for the purpose of inducing him to vote for the plaintiff.

The remaining objection to these counts is general in its character, and applies to both of them. The defendant claims that words, charging a person with a violation of the seventeenth section of the act, which has been referred to, are not actionable, *per se*, because the offence prohibited by it, neither involves moral turpitude, nor subjects the offender to an infamous punishment; and that, as no special damage is alleged in these counts, they are insufficient. We are induced to adopt the principle relied

on by the defendant, that, in order to render words charging a crime, or offence, actionable of themselves, it is not sufficient that they impute to a person merely the violation of a penal or criminal law, but that they must charge him with a crime which involves moral turpitude, or would subject him to an infamous punishment. But this principle does not aid the defendant in this case; for the offence of bribery imputed to the plaintiff, involves, in our opinion, moral turpitude, in a very high degree, as it is calculated and designed, to impair the purity of the elective franchise, by corrupting the integrity, and destroying the independence of those who exercise it, and thus to prevent a free and honest expression of the public sentiment at the ballot-box, which is the very foundation and support of our government.

The motion in arrest of judgment, should therefore be overruled.

The defendant also moves for a new trial, for error in the charge of the court below. If the question whether words, imputing to the plaintiff a violation of the law which has been mentioned, are actionable of themselves, was properly made by the defendant on the trial, it results from what has been said, that the court below did not err in not charging, as requested by the defendant, nor do we think that the charge in other respects was wrong. The evidence as to the words claimed to be proved, was received without objection, and no question of variance between the words, as laid and proved, was raised. Nor was any point made as to the propriety of the innuendoes. If the words proved constituted only a part of those laid, and were not actionable, it would probably have been competent for the defendant to insist that they should be excluded from the consideration of the jury, as a ground of recovery; or, if all of the words laid in any one count, had not presented an actionable charge, the defendant might have requested a verdict on that particular count, so as to have raised the question as to its sufficiency: but no such points were made on the trial.

A new trial should not be granted.

In this opinion the other judges concurred, except Waite, C. J., who was disqualified.

A new trial not granted.

Supreme Court of Texas. November Term, (at Austin,) 1855.

GUILBEAU *v.* MAYS, *et al.*[1]

Registration of titles in Texas — Titles adverse to eleven league claimants — Bona fide purchasers, without notice — What is notice.

In Texas, a government title to land, not recorded in the county where the land, or part of it (if the tract is on a county line) lies, will be postponed to a junior title held by an innocent purchaser, without notice of the elder title.

What is notice.

THE facts and questions in this case appear in the opinion of the court by

LIPSCOMB, J. — The plaintiff claimed under a grant of a league of land to each of the grantees, De Leon and Gomez. The defendants pleaded not guilty — prescription of three years — also that there was no record of the plaintiff's grant in the general land office, nor in the county where the land was situated. That they, the defendants, held by patents issued from the government of Texas, and locations of valid certificates without notice of the plaintiff's title. They also pleaded that the plaintiff's vendors were aliens, incapable of holding or suing for land, and incapable of conveying title to the plaintiff.

The plaintiff produced no evidence that the grants to De Leon and Gomez had been deposited in the general land office, or recorded in the county where the land was situated, or delineated on the county map, or on the map of the general land office. One witness swore that he knew that De Leon and Gomez had land granted to them, and that it was a matter of notoriety; and another swore that he knew the land, and was one of the chain carriers when it was surveyed. There was no evidence that the land had been settled, or that boundaries had been marked out to designate it, so as to give notice that it had been appropriated as private property. The defendants showed patents for a part of the land, and locations and surveys for the balance, to Henry Louis, and a deed duly recorded in the office of the clerk of the county court, conveying the land to Mays, in 1848. The record

[1] This opinion, we are informed, is of great importance, and settles the title to land in a very large number of cases.

shows that this suit was commenced in January, 1853, and there is no evidence of notice previous to this term, to Mays, of this adverse title, on which this suit is instituted, unless a presumption of notice to him can be raised, from the evidence before cited.

The inconvenience and actual injury to the country and its citizens, from not knowing what lands had been appropriated and set apart from the public domain, seems to have been fully understood and felt by our government, at its first organization.

It was not only an inconvenience but a loss to those who had claims upon the government for land, — they would be often subjected to a loss of time and expense in their locations and surveys, when acting with perfect fairness and in good faith; with the strongest wish to avoid an interference with a previously acquired title, they would find from ignorance and want of notice of such older title, that they had located and surveyed upon one. In the last paragraph of the tenth article of the general provisions of the constitution of the republic, it is declared that with a view to the simplification of the land system and the protection of the people and government from litigation and fraud, a general land office shall be established, where all land titles of the republic shall be registered, and the whole territory of the republic shall be sectionized in a manner to be hereafter prescribed by law, which shall enable the officers of the government, or any citizen, to ascertain with certainty the lands that are vacant, and those lands which may be covered with valid titles. The general land office required by the constitution, was created by the act of congress of December 22d, 1836. (Hart. Dig. Art. 1782.) By the first section of a joint resolution concerning public lands, passed Dec. 14th, 1837, (Hart. Dig. Art. 1835,) it is enacted "that it shall be the duty of every person or persons who may have in his or their possession or control, any titles or documents whatever, which relate to lands, and which by the laws now or heretofore existing in Texas, have been and are considered 'archives' to deliver the same to the commissioner of the general land office, on his order within sixty days after the final passage of this act," and by the fortieth section of the act of December 14th, 1837, (Hart. Dig. Art. 1876,) it is enacted that "each county in the state shall be considered and constitute a section, and that each county surveyor be required as soon as practicable, to make out or procure a map of each county, on

which plats of all the deeded lands in the said county shall be made so as to make a fair showing of the same."

For the object of the above acts, and the several acts of congress, requiring maps of the several counties, see *Smith* v. *Power*, 2 Texas, 57, 70, 71.

By the thirty-seventh section of the act of December 20th, 1836, (Hart. Dig. Art. 2754,) it was enacted: "Any person who owns or claims land of any description, by deed, lien, or any other color of title, shall within twelve months from the first day of April next, have the same proven in open court, and recorded in the office of the clerk of the county court in which said land is situated; but if a tract of land lies on the county line, the title may be recorded in the county in which part of said land lies." The fortieth section of the same act, (Hart. Dig. Art. 2757,) declares that "no deed, conveyance, lien, or other instrument of writing, shall take effect, as regards the interests and rights of third parties, until the same shall have been duly proven and presented to the court as required by this act, for the recording of land titles. And it shall be the duty of the clerk to note particularly the time when such deed, conveyance, lien, or other instrument is presented, and to record them in the order in which they are presented." The act of May 10th, 1838, enacts that so much of the thirty-seventh section of an act entitled an act organizing inferior courts, and defining the powers and jurisdiction of the same, approved December 20th, 1836, as requires recording before the first day of April, 1838, be, and the same is, hereby repealed.

This modification of the thirty-seventh section of the act above cited, will only change its effect so far as that section required the record to be made within the time limited, and it will then read: "Any person who owns or claims land of any description, by deed, lien, or any other color of title, shall have the same proven in open court, and recorded in the office of the clerk of the county court in which the land is situated, but if a tract of land lies on the county line, it may be recorded in the county in which part of said land lies," — leaving it still obligatory on the owners of such evidences of claim, lien or title, to have them recorded, and subject to the same consequence if not recorded, as by the fortieth section of the same act, as to any intervening rights of third parties, is imposed, or declared.

Subsequent legislation has not materially changed the

acts we have cited. It has modified the law in relation to the proof, but the same protection is given to third parties without notice, and it is believed that the act of January 19th, 1839, (Hart. Dig. Art. 2761,) has a direct reference to the description of titles on which this suit was brought. It is as follows: "That copies of all deeds, &c., when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the proper officers, shall be admitted to record in the county where such land lies." It is well known that in case of most, if not all, the titles to land extended prior to our separation from Mexico, the original remained as an archive, and a testimonio was given to the interested party as an evidence of title. But for this last enactment it might be contended that a testimonio, being only an authenticated copy, was not required to be recorded in the county where the land was situated. This act leaves no doubt on the subject that this kind of evidence of title also ought to be recorded.

In view of the legislation on the subject, it is believed not to be susceptible of a doubt, that the grants upon which the plaintiff bases his right to the lands in question, ought to have been recorded, and their failure so to be recorded, or delineated on the maps or other notes, will postpone them to a junior title derived from the government, and will place the defendants in the position before the court, of innocent purchasers, without notice, in principle not distinguishable from the great class of cases of innocent purchasers without notice of any prior or superior title, whose title is to be preferred to the better legal title. It is a maxim of the law, approved by the soundest tests of morality, that you may use your own as you please, so that you do not injure another thereby. If you think proper, you may stand by and see another improve and build upon your land, believing it to be his error, and give him no notice that it is on your land that he is so expending his labor and money; but be assured, by so doing, you will lose your right to the land and improvements; so you may, if you think proper, put your title in your trunk, without having it recorded; but if you do so, and an innocent purchaser should buy the same land from the person or sovereignty possessing the original title, your elder title must and will give way to the junior title, and it is the consequence either of your neglect or fraud, it matters not which. It shall not be the occasion of an innocent party's suffering loss.

The defendant, Mays, was a purchaser, for a valuable consideration, from Lewis, who had acquired title from the state, and it is evident that neither of the defendants had notice from the record or any public map, that there was an adverse claim to the land in controversy, and both must be regarded as purchasers for a valuable consideration, and must be presumed, in the absence of the notice required by the laws of registration, to be purchasers without notice. I am aware that the general doctrine on the subject of recording titles, required to be recorded, is subject to the qualification, that though not registered, still they are binding between the parties, and also binding on those who have notice, and further, that it is not necessary that actual notice should be given to third parties; yet I believe that the latter conclusion has arisen where the statute requiring the registration, has not been so explicit and peremptory as the fortieth section of the act of December, 1836. The statutes of most of the states leave the consequence of non-registration to be, that it shall not affect subsequent purchasers, for a valuable consideration, without notice, nor the title between the parties. Ours is explicit, that it is not to affect third parties until it is recorded, without the qualification of notice or no notice. I therefore believe that notice does not supply the failure of the requisition of the law, that it shall be recorded. But it has been ruled otherwise in this court, in the case of *Crosby* v. *Houston*, 1 Texas, 203, where it was held, that notice to the party would supply the want of proof and registration required by this section, and of course it is the law of the court. I did not participate in that decision, and this is my apology for expressing my own opinion here.

We will now look to the facts, for the proof of notice to the defendants. There is no pretence that actual notice of the plaintiff's title was brought home to the defendants, and if he is to be affected with notice, it must be a presumption, from the notoriety of the title of the plaintiff's vendors.

If certain facts are a matter of general notoriety in a neighborhood, a presumption will in general arise, that all who are interested will be apprised of the existence of those facts, there supposed existent, and if, from this rumor, a prudent man could ascertain the truth, he will be regarded as affected with notice. Now what is the fact that the witness testified was notorious? It was, according to the witness, that De Leon and Gomez had received land from the government on the Cibolo. A prudent man would,

before he made a purchase, or located on the land, go to the parties said to be the owners of the land, and inquire if it was true, and inquire the extent and locality of the land so claimed, and if the claimants were non-residents, he would inquire of their agent, if they had one. But suppose the witness had gone further than he did, and sworn that the metes and bounds of the land were equally notorious, a prudent man would have examined for himself, and if metes and bounds were found, or if not precisely marked out, if there was sufficient found to show him, that the land had been appropriated, he would be affected by this notice. If, however, upon a diligent examination, he could find no lines nor anything to show that the land had been run out, and the parties for whom rumor had claimed the land were not in the county, and no known agent of theirs was there, the party purchasing or locating would have no implied notice.' This in principle is analogous to the ruling of the court in the case of *Lewis* v. *Durst*, 10 Texas, 398, applied to a location of a land certificate. In that case we say, on the authority of Washington C. C. R. 81, 9 Wheat. 673, 1 Wheat. 730, 2 Wheat. 206, and 8 Pet. 75, "It is believed to be well settled that to make a valid location or entry it should be attended with such circumstances and facts of notoriety as would furnish a person of ordinary diligence with notice that the land had been located. This is the rule believed to prevail where the mode is not particularly pointed out by express law. When the land has been surveyed, the marked lines would give something to put a subsequent location upon." It does not appear that the land had been injured,[1] nor that there were any notorious marks by which it could be known. Now, in cases of title emanating from this government, where the patent had not been recorded in the county where the land lies, the archives of the general land office, and the maps of surveys, would be regarded as notice that the land was appropriated and was not a part of the vacant domain of the republic.

In this case, the notoriety testified to only went to the fact that the grantees under whom the plaintiff claims title, had received land on the Cibolo, but nothing is furnished to those wishing to locate to show the particular land so granted. One of the grantees was dead, and his family, together with the other grantee and his family, went off to

[1] *Sic.* Entered?

Mexico, in 1836, and have remained there ever since, leaving no record, no map, no marks, by which the particular land could be known, to designate it as having been set apart from the public domain, and no agent or tenant in possession, to show to the most cautious inquirer, the particular land so claimed. Nine years after such abandonment, they sell the land to the plaintiff before any notice, by record, map, or in any other way, of their right. The defendants, and those under whom they claim, had acquired title for the same land from the government, settled it, and made valuable improvements, worth ten or fifteen thousand dollars. Under such circumstances, can it be doubted that these defendants are innocent purchasers, and are entitled to be protected as such? If the plaintiff has suffered the loss of title, the loss is to be ascribed to his own negligence, or the negligence of his vendors, in disregarding the requisitions of the law, requiring them to record their titles, and leaving the land unoccupied, and no one to designate his claim of title. It would be unjust to deprive the defendants of rights derived from the government under such circumstances. It is a rule of universal application, that where one of two parties must suffer, the loss must fall upon the one who has been most in fault. The wisdom and sound policy of our registration laws, and the construction we have put upon them, will be manifest from the fact that thereby fraud and forgery of titles purporting to have been made before the closing of the different land offices, by order of the consultation, will, in a great measure, if not entirely, be cut off or rendered harmless. But for this, it is impossible to see the extent to which these frauds could have been successfully perpetrated. The view we have taken of the defence under the plea of innocent purchasers without notice, will dispose of the case, and renders it unnecessary to pass on the plea of alienage, and the plea of the statute of three years' possession, under color of title. We will, therefore, refrain from an expression of our opinion on those points, until they are presented where it will be necessary for the disposition of the case that they should be decided. Judgment affirmed.

Supreme Judicial Court of Massachusetts. Suffolk, ss. Nisi Prius. Before DEWEY, J., *Nov. Term*, 1855.

HORACE BILLINGS *v.* EDWARD RUSSELL AND EDWIN F. WATERS.

Joinder of defendants in an action for slander — Mercantile agencies — Slander — Privileged communications.

THIS was a suit brought by a merchant, an extensive manufacturer and tanner of leather, in the town of Bridgton, Maine, against the proprietors of the Boston Mercantile Agency, for an alleged slander and libel, in which the damages were laid at $10,000.

The plaintiff's declaration contained two counts; the first charging the defendants with having, on the 28th of November, 1854, and at other times thereafter, publicly, falsely, and maliciously declared of the plaintiff, that he was insolvent, and in bad pecuniary credit in business, by words spoken of the plaintiff, substantially as follows, viz: "He is largely in debt," "he has conveyed away his property," "he is getting ready to fail," "he is worse than nothing;" the second count charged the defendants with causing to be written and published, a false and malicious libel of the plaintiff, in the following words; "He is largely in debt," "he owes a great deal," "we think he is getting ready to fail," "he is worse than nothing."

Upon the calling of the first witness, at the trial, to prove the slander, the counsel for the defendants objected, that an action for slander could not be maintained against two persons jointly, and that therefore no evidence could be given to sustain this count. The court sustained the objection, and ruled that the plaintiff must discontinue against one of the defendants altogether, or must proceed upon the count for libel alone. The counsel for the plaintiff chose to discontinue the case altogether against Edward Russell, and proceeded only against Waters.

The counsel for the plaintiff then introduced evidence to show, that in the fall of 1854, the plaintiff had been refused as a receiptor by a deputy-sheriff, who had attached the stock of goods in the store of the plaintiff's brother, a merchant in the same town, whom the plaintiff assisted in business, in consequence of certain reports which were current in Bridgton unfavorable to the pecuniary credit of the plaintiff; that the plaintiff was a man of large property, doing the largest business in the town, and trading

largely in Boston; that his credit and standing were generally known, and regarded as good; that the unfavorable reports were said to have come from the Boston Mercantile Agency; that several merchants of Boston had called at the office of the Agency, where they had heard reports read from the books of the office by the defendant's clerks, unfavorable to the credit of the plaintiff; that a friend of the plaintiff at an interview with the defendant at the Boston Theatre, during the month of December, had informed him that he (defendant) had an unfavorable report of the plaintiff upon the books of his office which was erroneous and unjust, and should be corrected, and that thereupon the defendant replied that he was not in the habit of altering his reports; that at a subsequent interview he informed the defendant, that the plaintiff felt aggrieved, but that he thought plaintiff would release defendant from all responsibility concerning the report, provided he would give up the name of his informant, which the defendant absolutely refused to do, upon the ground that it would be dishonorable. Other evidence was brought forward, showing that the defendant had been frequently requested to disclose the name of the author of the unfavorable report, but had constantly refused; and the books of the defendant were introduced, from which it appeared that the unfavorable report had been erased, and a favorable report substituted in its place.

The counsel for the defendants admitted that an unfavorable report of the plaintiff had been received and entered upon the books of the Agency, and read to the regular subscribers, who were interested in knowing the standing of the plaintiff; and offered evidence to show that the business of the Agency was conducted in a strictly confidential manner, and that the information given to their subscribers was obtained in good faith, and communicated only to persons by whom they were regularly employed in the ordinary course of business, to ascertain the credit and standing of parties with whom they were connected in business, and who were bound by agreement not to disclose the information thus obtained; and that their relations with their subscribers were entirely confidential and strictly guarded; that on the evening of the 18th of December, 1854, the defendant was informed at the Boston Theatre that the report of the Agency concerning the plaintiff was erroneous, in consequence of which information, the report was erased from the books

of the Agency, and on the 20th of December a favorable report substituted in its place, previous to the suit, which was commenced on the 21st.

The counsel for the defendant argued that the plaintiff had wholly failed to establish his case, and had not even proved that the defendant spoke the words or the substance of the words charged in the count for slander, or proved that the report written in their books and published to their subscribers, was in the words alleged by the plaintiff in his count for libel; they also claimed that if the slander and libel were both proved, still they were privileged communications, and therefore not actionable words, or a libel.

Richard H. Dana, Jr., for the plaintiff.

Henry F. Durant, and *Samuel C. Burr*, for the defendants.

Dewey, J., after briefly stating to the jury the legal distinction between slander and libel, instructed them, in substance, that unless the plaintiff had proved satisfactorily to their minds, that the defendant had spoken the words substantially as charged in the first count of the plaintiff's declaration, they must find a verdict for defendant upon that count, and proceed to the consideration of the second, and if the evidence upon this part of the case failed to convince them that the defendant had caused to be written and published, the precise words charged in the plaintiff's declaration, they must find for the defendant on this count also. Should it appear to them that the plaintiff had failed to sustain either of the counts contained in his declaration, he could not maintain his action, and the jury must find for the defendant.

Generally where a person makes a statement injurious to the character and standing of another, he is liable in a civil action therefor, to the party injured, provided it turns out to be false; but there are exceptions to this rule, as where a party seeking to employ a servant, makes inquiries of another respecting the servant's character, and the person so inquired of, communicates information respecting the same, confidentially and without malice, he would not be liable, though his information should prove to be incorrect and mistaken; so also one may make inquiries by himself or his agent, and whilst the agent is executing the trust reposed in him, he is protected, because the occasion is proper and the communication confidential. It matters not whether the agent is employed by one or more persons, the principle is the same, and

though the communication be in writing, it is no publication of an actionable libel, if imparted only to those having a right to it, and who are to be benefited by it. If a party receiving information from his authorized agent in confidence, should see fit to violate the condition of its reception, and publish it generally, then such person would appear to have overstepped the line of his duty in thus imparting it to others, and should be responsible for the injurious consequences arising from such an act, rather than the agent who had confidentially communicated the information to him.

In reference to the case before them, the jury were instructed that it was competent for the defendant to show that the words used were confidential communications made in the ordinary course of lawful business, from good motives, and for justifiable ends, and under circumstances that would constitute a defence. If the defendant, as the constituted agent of a commercial house, upon the application of his principal, made inquiries at the proper places, and under proper and reasonable guards to insure accuracy and privacy as to the information thus obtained, and the information which he thus obtained was repeated *bonâ fide* to his employer and him alone, as the result of such inquiries, and for the purpose of governing his conduct in his business transactions with the party as to whom the inquiry was made, such communication may be justifiable as a confidential communication, and the defendant would not be responsible, although the information was incorrect and unfounded in fact, the defendant acting in good faith, and believing it to be true at the time he communicated it; but the privilege of a confidential communication would be confined to the agent, and if the principal repeated it to others, he would be responsible therefor.

The learned judge further instructed the jury that the first question for them to settle was, whether the plaintiff had sustained his case at all, for if he had failed to prove the substance of the slander alleged, or that the report written on the defendant's books was the same as charged in the count for libel, then they need go no further with their inquiries; but if they found the words to have been spoken, or the libel to have been published, then they would proceed to the inquiry, whether it was a privileged communication.

The jury returned a verdict for the defendant, and in answer to an inquiry from the court, stated that the plaintiff had not proved the slander or libel as alleged in his writ.

Miscellany.

WITCHCRAFT.[1] — Sinsat is a little village of the canton of Cabannes, containing about two hundred inhabitants, and about twenty-four kilometres distant from the chief place of the department. If its population places it towards the bottom of the table among the communes of the Ariége, its amount of instruction places it lower still. The people there still believe in witches and in ghosts, and consult those who profess to be diviners, prognosticators and interpreters of dreams. It is true that this credulity of another age extends over other communes of the canton, and even over other cantons of La Haute-Ariége; we might, if need were, find proof of it in the archives of the proper courts. Nothing hitherto has served to open the eyes of this excellent population. Perhaps this prosecution will not be without happy results; it may serve to correct, by ridicule, habits arising from ignorance.

At Sinsat dwells a man named John Baptiste Séguéla, almost seventy years old, with hair white and uncombed, eyes round and small, a middle-sized, flat nose, indicating craft, ingenuity and astuteness, according to those writers who have treated of physiognomy.

His fellow-citizens, a long time ago, gave him the surname of Bou-Maza, because, says gossip, he has, like the illustrious sheik of Africa, an extravagant fondness for the animal which nursed Jupiter in a cave, on a mountain mentioned in the classics, and which is still venerated by the tribes of the desert. This appellation, which may be a little misapplied, Séguéla owes to one of his neighbors, an old soldier of Algiers, and an enthusiastic admirer of the veritable and celebrated Bou-Maza.

However that may be, Séguéla is the accused. His character is not bad; he has never been known in the criminal courts. He is considered generally an honest man, if regard be had to the notes delivered to him by the mayor of his commune. He seems to have been serviceable, and to have been quite popular, for at the last elections he was unanimously chosen municipal councillor. Possessor of a pretty little farm, he derived from it an income sufficient to support him, being alone, without relations, and requiring but little of the services of others. And yet prejudice reproaches him with many petty swindlings and slanders, and accuses him of having derived illicit gain from the prohibited exercise of the art of curing.

The false Bou-Maza pretends to have the gift and privilege of infallibly restoring health to men and beasts; and he informs young girls of the precise moment when they will take to themselves a husband; and can, if they ask it, let them know whether their husbands or lovers respect their oaths of fidelity.

While listening to the accused, one's thoughts are naturally carried back to the times made familiar to us by our classical studies, and we strive to recollect the various systems advanced and sustained by the philosophical sects. Zeno and his school recur to our memory, when Bou-Maza declares that pleasure and pain have no real existence, but are

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[1] We find among our papers the following translation, from the *Gazette des Tribunaux*, of July 26, 1854.

simply illusions. According to him, physicians are of no use, and ought to be forbidden to practice. All the alternations of health, with which humanity thinks itself afflicted, are only the result of the entrance, into the bodies of men, of wizards and witches, and of the influence they exert; his talents and efforts are exerted in expelling them, and preventing their return.

To do this, Séguéla has borrowed an expedient from antiquity. He makes use of a sieve, of which Cicero, in one of his works, has eloquently described the use, and which the diviners of ancient Rome had the habit of employing in their incantations. The sieve is an instrument in such common use that we need not describe it; we will only say that Séguéla fixes, on the periphery of the circle, two scissors, and puts his forefingers in the rings, in such a manner as to hold the sieve free in the air. After these preliminaries, he pronounces unintelligible words, makes a multitude of signs of the cross, at the same time uttering ejaculations, among which are heard the words of Christ's Passion, and others of religious import. He represents the number of wizards and witches to be very great, dispersed throughout the divers localities of the world, the village of Sinsat containing forty-seven, remarkable for their tenacity and malignity.

The exercises of Bou-Maza vary according to subjects. A person presents himself; he kneels before him, mumbles a few phrases, turns his eyes towards heaven and towards the earth, to the right and to the left; and although he cannot read, gravely passes his eyes along the lines of a book, which came to him from one of his masters. He then takes the sieve, interrogates it, and, by the movements of the instrument, decides that witches are present, their number, quality and power. As the first means of cure, he prescribes the celebration of three masses, and then the use of certain drugs, or of certain herbs.

If, on the contrary, a sick beast is brought to him, he asks for a piece of silver, some salt and some vinegar. He melts the salt in the vinegar, puts the silver in the liquid, makes signs of the cross on the suffering animal, mutters low and rapidly certain words which no one understands, and lights several small wax candles, previously blessed by the priest, on the animal's back. This scene is generally acted in a closed stable, with none present but intimate friends. Burnt by the melting wax, the animal struggles violently. The witches then issue from the body, and as the darkness attracts butterflies and insects to flutter around the flames of the candles, who in the end are burnt, Bou-Maza, proud and radiant with joy, announces the death of the wizards and witches — and the animal is cured.

At other times, when consulted on a contemplated divorce, on a lawsuit designed or anticipated, on any quarrel whatever, he points out such or such a man as confederating with wicked witches. Hence hatreds are inflamed, friendships are broken, and the persons pointed out become *pariahs* in their communes. Bou-Maza also points out certain individuals as having lost their honor, as guilty of dishonesty, and sometimes even of crimes. Thus, a poor old woman, having lost her only daughter within a fortnight after her marriage, hastened to him to inquire the cause of her death. Bou-Maza reflected an instant, and replied that the young wife had been poisoned by her husband, desirous of being released from his marriage that he might live with a concubine. The afflicted mother then hastened to the magistrate, who instituted an inquiry, which resulted in complete proof of the innocence of the husband.

Bou-Maza sometimes received money, more often provisions, and a cow given to him as a present was spoken of in the trial. On receiving these, he proceeded to divine, to cast out witches, and to prescribe remedies for supposed diseases.

For these doings he was summoned to answer to the triple accusation of swindling, defamation and illegal practice of medicine; and was, after an earnestly contested trial, sentenced to be imprisoned eighteen months, and pay a fine of sixty francs.

La Marianne. — But before we proceed farther, let us, in a few words, explain to our readers what La Marianne really is. It is the one unique association into which have been merged each and all of the several secret societies of which so much was said and written between 1848 and 1851. It is, in fact, the sole existing revolutionary society in France, but it is not the less formidable for that. The exact number of its members it is, of course, next to impossible to ascertain accurately; but a police report last May did not scruple to carry them to the figure of 900,000 men; and the Preféct de Lyon and Marshal Castellane, to whom this was repeated, did not seem to hold the statement as an exaggerated one. Let what will be the numbers of La Marianne, however, it is certain they are considerable, but its organization is a matter for even greater astonishment. These men, numerous as they are, disseminated over the whole territory as they may be, never, by any chance, establish any communication in writing. They have been, in perfectly opposite directions, brought into collision with the law, but no one *written* proof of the culpability of any one of their accomplices has yet been discovered. They have signals of their own, by which they communicate, and which, as we perceive, sometimes play them false. What these signals are none can say. One thing we believe to be a *sine quâ non* of their establishment in any department, namely, the disposal of a newspaper. But this is so artfully managed that often it is a most conservative journal that is their instrument. They do not use this paper as an organ, but as a *medium*. They must have amongst its proprietors, or shareholders, or directors, one or more of their own men; and then it is believed that their signals are transmitted openly and surely, but by some means decided upon amongst the leaders, and impenetrable to other ears and eyes. The insertion of such an advertisement, or the manner of placing such or such letters in a particular part of the journal, is thought to be the ordinary way by which they correspond; but this it has as yet been found quite impossible to trace accurately or in a way to be useful; so that the means of communication of these fanatics are to this day probably as secure as they ever were. Now as to the hierarchical division of their forces. It seems to be the same everywhere; for the writer of these pages had occasion to talk with a préfet and a sous préfet, — one of a very important department, the other of a manufacturing town in France — who had been called upon to act in cases where men affiliated to La Marianne had to be examined, and the description of both these gentlemen coincided exactly with all that came out upon the trial of the Angers insurgents. When justice first lights upon an indication leading to the notion of La Marianne being in question, it first has to do with what is in police slang termed "*the man who bites*," (*celui qui mord.*) This is the mere material agent, the unit, the fraction of that which, added to other fractions, makes up the aggregate force; but it is, like all mere force, brutish and unintelligent. From the men of this class every revelation is easily and at once extracted, but they have nothing to reveal. They know nothing, and have in no way been trusted. Their utmost utility reaches to the recognition of the individual who was to recruit them by tens, — him they naturally deliver up, and thus the police lays its hand upon the *Dizainier*. This personage may perhaps be somewhat more intelligent and a trifle more cunning, but he has also a very small store of knowledge. He can, nevertheless, point to the real chiefs, who are, perhaps, one or two,

or it may be, (though rarely) three. These men are apprehended (granting they have not been so from the first); but here all possibility of making any advance or impression ceases. This is what the police vocabulary, already quoted, terms "finding the rock," (*ice on trouve le roc,*) and the efforts made to produce an impression here have about the result of a lady's finger nail upon granite.—*Law Review.*

STRAHAN, PAUL AND BATES—MR. BATES. — What *is* the Home Office doing with the case of the unfortunate Mr. Bates. Ample time has been given for investigation of the facts; why then is the decision delaved? If he is innocent, he is entitled to an immediate pardon; if the result of inquiry has been to establish his guilt, public justice is entitled to be relieved from the cloud of suspicion that now hangs over it. This is no common case. Be it remembered that the jury by whom he was tried have published a document, solemnly asserting that if the facts that have been disclosed since the trial had been submitted to them at the trial, they should have acquitted him instantly. In the absence of that privilege which our law so inconsistently gives to a question of 10*l.*, but denies to life and liberty — an appeal against a wrongful decision upon the facts in a criminal case — the secretary of state constitutes the true court of appeal, and when a case is shown to him which, in a civil court, would have given to the complainant a new trial, it is his bounden duty, without the delay of an hour, to direct an investigation and, having investigated, to come to a decision forthwith. The facts in Mr. Bates's case are not numerous nor far to seek. An examination of the clerks who were in the bank with him, and of the men who were his nominal partners, would elicit the true state of the business, and his actual position there. A couple of hours would have sufficed for this purpose, and five minutes would be ample for deliberation. A day might and should have done it all, and either have sent forth Mr. Bates to the world with a pardon — that word of mockery to innocence — or announced to the public that inquiry has failed to sustain the allegations of his petition.

What the secretary of state has failed to do, the jury, with a desire for justice most honorable to them, have undertaken to do. They have taken upon themselves, for the satisfaction of their own consciences, to inquire into the facts, and are satisfied that the defence is true, and they have just sent their second petition to Sir George Grey:

"TO THE QUEEN'S MOST EXCELLENT MAJESTY. The humble petition of the jurymen who tried the indictment of the Queen on the prosecution of *Dr. Griffith against William Strahan, Sir John Dean Paul, baronet, and Robert Makin Bates, at the sessions holden at the Central Criminal Court in the month of October, 1855,*

Showeth—That having thoroughly investigated the allegations contained in the petition of the said Robert Makin Bates to your Majesty, and the evidence produced to us in support thereof, we are now enabled to declare ourselves perfectly satisfied and convinced that such allegations are true; and had the facts now known to us been proved at the trial of the said indictment, we should not have convicted the said Robert Makin Bates. Under such circumstances, we feel ourselves justified in renewing our humble petition to your Majesty, that your Majesty's free pardon may be graciously extended to the said Robert Makin Bates, and that he may forthwith be restored to liberty. And your petitioners will ever pray, &c."[1] — *Law Times.*

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[1] This is followed in the Times by *nine* signatures.

Homœopathy. — Mr. Jones, a homœopathist, brought an action in the Court of Common Pleas, against a patient, to recover 58*l.* for journeys and medical attendance. The defendant paid 25*l* into court. Several medical gentlemen, who were called as witnesses, said the charges were fair and reasonable. One of them, Mr. Watkins, a member of the College of Surgeons, was asked to look at the prescription of the medicine given to the defendant. He said he could not make anything of it. The plaintiff was called; and he said it prescribed four ounces of aconite, four ounces of belladonna, and an "ordinary lotion of silica." This he further explained, — the "lotio ordinaris" is what homœopathists call "flint water;" "that is," said the counsel for the defendant, "what you would term aqua pumpagenis — pump-water with flint in it." Mr. Watkins said he had never heard of this solution of flint in his life. It was shown that the homœopathist had, after the first ten or twelve visits, offered to call upon his patient as a friend. The jury were of opinion that the 25*l.* paid into court asw a sufficient remuneration. — *English paper.*

A Sharp Cabman. — Some time ago, Mr. Arnold, the Westminster magistrate, decided that a cabman could not charge for one child under ten years of age as an extra person. The other day Samuel Brown refused to carry a child; and forthwith a complaint was made at the Westminster Police Court. Brown contended that he was certified to carry five persons, that Mr. Arnold had decided that two children were a person, but that one was not. "If a child is a person," said the astute Brown, "a cabman has a right to charge for it as an extra; if he can't charge for it, why then it can't be a person. Under your decision, a child under ten years of age don't constitute a person, and therefore, as it isn't a person, I refuse to carry it." Mr. Arnold and Mr. Paynter concurred in the opinion, that although a cabman cannot charge for a child under ten years of age, he is still bound to carry it; but as Samuel Brown might have acted under an erroneous impression, they would not inflict a penalty. Brown, sturdy to the last, asked and obtained a week's adjournment, "to take legal advice."—*Ib.*

Notices of New Books.

The Practice of the Courts of Justice in England and the United States. By Conway Robinson. Richmond: A. Morris. 1855.

We have received the *second* volume of this work, "Treating of the Subject-matter of Personal Actions, in other words, of The Right of Action."

Mr. Robinson's reputation, by no means new to us, and the reported success of his former volume, lead to the most favorable impressions of his success. But it would be out of place to express our opinions on a portion of the work only, and we must defer any further notice until we receive the first volume.

Since the above was sent to the printer we have received the first volume, and shall notice the work in a future number.

Obituary Notice.

HON. TIMOTHY WALKER.

Hon. Timothy Walker was born at Wilmington, Middlesex county, Massachusetts, on the 1st of December, 1802. His father, a respectable farmer, was a descendant of William Brewster, who came over in the Mayflower. When Mr. Walker was yet a child, his father died, leaving a widow, a large family of children, and a small inheritance. He spent his youth on the farm, scarcely going to school before he was sixteen years old. Entering Harvard College as freshman in his twentieth year, he passed through college with distinction, taking all the prizes in order, and graduated first scholar.

The next three years were spent at Northampton, as teacher of mathematics in the Round Hill School, where he increased his general reading, contributed to the North American Review, delivered lectures on natural science, translated from the German "Fischer's Elements of Natural Philosophy," wrote a treatise on geometry, and attended Judge Howe's law lectures.

After spending, then, a year in the Cambridge Law School, under Judge Story and Professor Ashmun, he emigrated to Cincinnati in August, 1830. He was there admitted to the bar in the following year, and quickly grew into favor. With a steadily growing practice, he yet found time to contribute copiously to reviews, magazines, and the newspapers, as well as to deliver frequent public lectures and orations.

In 1833, he joined Judge Wright in establishing the Cincinnati Law School, and was for many years one of its professors. His lectures in the school were afterwards published as his well-known "Introduction to American Law."

In 1842 he accepted an appointment to the president judgeship of the Hamilton Common Pleas, where his short career, marked with ability and courtesy, cleared away a mass of business which had accumulated there.

In 1843 he established the Western Law Journal, and remained for some years sole editor.

In the summer of 1850 he re-visited Harvard College, to deliver the Phi Beta Kappa oration. In 1854 the college conferred on him the degree of LL.D.; and in the spring of 1855, when congress had divided Ohio into two federal, judicial districts, he drew up, under appointment by the courts, the rules of practice for the circuit and district courts for the southern district. In the following August he was violently thrown from his carriage; after a long and painful confinement, going to his office, with strength only partially restored, he caught cold, returned to his sick chamber, and died on the 14th of January, 1856.

Never taking an active part in politics, only his continued interest in literature and science, shared his devotion to the law. It was not, however, a blind devotion. As early as 1835 he published an argument in favor of codification; he was always strenuous in demanding the abolition of seals, simplification of pleading and practice, and changes in the law of married women and the law of crimes,—most of which reforms he lived to see incorporated into the laws of his state.

Judge Walker was remarkable for the vigor and clearness of his mind, the absolute precision of his ideas, his quickness and his conciseness. He

was very able in cross-examination, and showed consummate tact in the management of a case. With masterly reasoning and simple eloquence, he was emphatically a strong man before both court and jury. He was a gentlemanly and high-toned advocate. He never did a discourteous or an unfair thing. He always acted on the rule that "no principle can justify us in doing, or our clients in requiring us to do for them, what we should blush to do for ourselves."

NOTICE.

The editors of the *Law Reporter* in announcing their intention to relinquish the editorial care of that journal, desire to express their regret that other occupations, as they fear, have interfered too much with the attention which should have been paid to the work. Nor do they surrender without reluctance, a labor which has been more agreeable to themselves than they can hope its results have been to the readers from whom they regret to part. To their contributors they desire to express their thanks for their favors, and to both, they recommend most heartily their friend and successor, John Lowell, Esq., of the Suffolk Bar.

To those who know Mr. Lowell, it is unnecessary to give their assurance that *The Reporter* will hereafter be conducted with vigor, ability, and sound judgment.

Boston, March 31st., 1856.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Commissioner.
Adams, James E (*a*)	Roxbury,	Feb 25, 1856	Charles Endicott,
Allen, Enos G.	Charlestown,	" 1,	Isaac Ames.
Bean, Elkanah F.	Lawrence,	" 1,	John G. King.
Bishop, Joseph D.	Boston,	" 14,	Isaac Ames.
Blanden, Leonard H.	Northampton,	" 2,	H. H Chilson.
Bradford, Charles T. (*b*)	New Bedford,	" 28,	E. P. Hathaway.
Bradley, William	Lynn,	" 5,	John G. King.
Bride, Richard	Wrentham,	" 27,	Charles Endicott.
Briggs, George W.	Boston,	" 9,	Isaac Ames.
Brisco, Charles (*c*)	Springfield,	Jan. 12, 1856	Henry Vose.
Brown, Joseph B.	Boston,	Feb. 27,	Isaac Ames.
Bruce, John A.	Springfield,	Oct 13, 1855	Henry Vose.
Bubier, Henry M.	Lynn,	Feb. 19, 1856,	John G. King.
Burns, Thomas	Springfield,	March 1,	Henry Vose.
Burpee, William P.	Boston,	Feb. 13,	Isaac Ames.
Buttrick, Abiel H.	Boston,	" 25,	Isaac Ames.
Carpenter, J. D C (*d*)	Springfield,	Jan. 21.	Henry Vose
Caswell. Michael B.	Lowell,	Feb. 7,	L J. Fletcher.
Childs, Charles	Springfield,	Oct. 23, 1855,	Henry Vose.
Converse, Augustus W.	South Danvers,	Feb 16, 1856,	John G. King.
Dix, Joel, jr.	Charlestown,	" 26,	John W. Bacon.
Downing, Richard	Charlestown,	" 28,	John W. Bacon.
Flynn, Catherine H. (*e*)	Boston,	" 6,	Isaac Ames.
Flynn, James J. (*e*)	Boston,	" 6,	Isaac Ames.
Friend, Charles (*f*)	Beverly,	" 28,	John G. King.

Furbush, Andrew	Charlestown,	Feb. 27, 1856,	L. J. Fletcher.
Goss, Lyman B. (*g*)	Charlestown,	" 2,	Isaac Ames.
Hall, Joab	Southampton,	" 1,	H. H. Chilson.
Hapgood, Joab	Shrewsbury,	" 8,	Isaac Ames.
Hathaway, Dean	Fall River,	" 16,	E. P. Hathaway.
Hawks, Zenas	Chesterfield,	" 18,	H. H. Chilson.
Hemmeon, James L.	Boston,	" 1,	Isaac Ames.
Henderson, Samuel	Salem,	" 12,	John G. King.
Kenney, Peter (*h*)	Ware,	" 16,	James G. Allen.
Kibbe, Francis W.	Springfield,	Jan. 28,	Henry Vose.
Leonard, Daniel M.	Holyoke,	Nov. 22, 1855,	Henry Vose.
Lord, William (*f*)	Beverly,	Feb. 28, 1856,	John G. King.
Lynch, Patrick (*h*)	Springfield,	" 16,	James G. Allen.
Manchester, Wm. E. (*b*)	New Bedford,	" 28,	E. P. Hathaway.
Martin, Nathaniel	Brighton,	" 14,	John W. Bacon.
Matfield Manuf. Co.	East Bridgewater,	" 28,	Perez Simmons.
Miller, Alexis C.	East Bridgewater,	" 27,	Perez Simmons.
Millet, Needham C.	Salem,	" 15,	Henry B. Fernald.
Mills, John, jr (*d*)	Springfield,	Jan. 21,	Henry Vose.
Moore, Pliny B.	Boston,	Feb. 22,	Isaac Ames.
Morse, Samuel (*i*)	Boston,	" 26,	Isaac Ames.
Nash, Erastus M. (*j*)	Abington,	" 18,	Perez Simmons.
Page, John A. (*g*)	Medford,	" 2,	Isaac Ames.
Parkhurst, Ziba	Milford,	" 11,	Alexander H. Bullock.
Perkins, Oliver L. (*i*)	Boston,	" 26,	Isaac Ames.
Ramsdell, Henry A. (*j*)	Abington,	" 18,	Perez Simmons.
Raymond, Merrick D.	Winchendon,	" 27,	Alexander H. Bullock.
Robinson, Christopher	Boston,	" 27,	Isaac Ames.
Robinson, Daniel	Gloucester,	" 21,	John G. King.
Smith, John T. (*a*)	Roxbury,	" 25,	Charles Endicott.
Smith, Seth W.	Springfield,	" 15,	James G. Allen.
Soper, Jeremiah	Hanson,	" 25,	Perez Simmons.
Spaulding, James C.	Reading,	" 20,	John W. Bacon.
Turner, George W. (*k*)	Abington,	Jan. 15,	Perez Simmons.
Warren, Franklin C. (*l*)	Boston,	Feb. 9,	Isaac Ames.
Warren, Joseph A.	Somerville,	" 5,	John W. Bacon.
Way, John M.	Roxbury,	" 7,	Charles Endicott.
Wheeler, Edward A.	Lynn,	" 1,	John G. King.
Wheeler, George F. (*k*)	Abington,	Jan. 15,	Perez Simmons.
Whetmore, Lorenzo D. (*c*)	Springfield,	" 12,	Henry Vose.
Whipple, Henry G. (*m*)	Salem,	Feb. 2,	John G. King.
Whipple, John (*m*)	Salem,	" 2,	John G. King.
White, Daniel A.	Dorchester,	" 1,	Wm. L. Walker.
Whittier, Seth (*l*)	Boston,	" 9,	Isaac Ames
Willis, William H.	South Reading,	" 27,	John W. Bacon.

(*a*) Adams & Smith.

(*b*) Bradford & Manchester.

(*c*) Brisco & Whetmore.

(*d*) J. D. C. Carpenter & Co.

(*e*) C. H. & J. J. Flynn.

(*f*) Partners.

(*g*) Surviving partners of the firm of Page, Wetherbee & Co. (consisting of themselves and Moses H. Wetherbee, deceased.)

(*h*) Lynch & Kenney, "private estate of Lynch and copartnership of the firm."

(*i*) Samuel Morse & Co.

(*j*) Nash & Ramsdell.

(*k*) Turner & Wheeler, as copartners and individuals.

(*l*) Whittier & Warren.

(*m*) Partners.